

MAINE JUDICIAL BRANCH

ADMINISTRATIVE OFFICE OF THE COURTS

REPORT OF THE EWARRANT WORKING GROUP

Submitted to Chief Justice Leigh Saufley
By Justice Daniel Billings, Chair
January 16, 2019

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i.
REPORT	1
A. PROCESS	1
B. RECOMMENDATIONS	4
C. CONCLUSION	9
APPENDIX	10
APPENDIX A - WORKING GROUP CHARGE	
APPENDIX B - WORKING GROUP MEMBERSHIP	

Executive Summary

Pursuant to the authority of the Chief Justice, *see* 4 M.R.S. §1, on July 24, 2018, the eWarrant working group was established¹. The group was tasked with researching and recommending one or more methods for designing and effectuating an efficient, fair and thorough digital, electronic system for the requests for, and judicial action on, arrest and search warrants. The expectation of the design is that the system will be available 24 hours a day, 7 days a week.

The working group membership comprised members of the Judiciary; Judicial Branch employees; members of the Legislative and Executive Branches; state, local and county law enforcement representatives; attorneys and interested stakeholder organizations². Each of those appointed had valuable knowledge, insight and experience to contribute.

During the course of four meetings between August and early January, members met to discuss the charge, review pertinent materials and research and review various eWarrant systems that are operational in different jurisdictions in the United States. Discussions were held concerning operational needs, institutional requirements, security and privacy concerns, constitutional issues and the review of methods used to assure the identity and authority of the applicants and judicial authority who will use the system. Matters concerning appropriate safeguards to prevent fraudulent use of the system were researched and discussed. Finally, potential impediments to successful implementation, including financial, technological, local, county and state system requirements and limitations and resource availability, were discussed.

The recommendations reached were unanimous and by consensus. The group was made up of persons from all facets of the system and the recommendations set out in the report demonstrate that everyone's needs and concerns have been considered and met with regard to the proposal.

¹ See Appendix A for the Order establishing the Group.

² See Appendix B for the Membership Roster.

As further described below, the eWarrant working group recommends that a single state-wide online portal for the submission and issuance of all arrest and search warrants be established. It should be an internet-based system with a direct virtual private network with appropriate encryption and certifiable credentials for access and use. The portal needs to have a single point of entry with a real time notification system to alert the jurist an application has arrived. It must have a process for logging in the application and for tracking results. The use of an email-based system is not recommended.

The group recommends that credentials include not only individual identification but a method/system for direct verbal communication between the officer and the jurist in the event that additional information is required. Rules for revisions to warrant applications or content prior to issuance must be adopted. Methods for authentication of signatures and the taking of the oath of the applicant must be established. A schedule for 24/7 judicial coverage and review will need to be designed and implemented.

The group further recommends that once a warrant is issued, the system have a method to “lock down” the contents of the approved warrant so that the warrant and supporting documentation cannot be altered or amended. Court processes for receipt, logging and moving the approved warrant to the appropriate case file must be established. Other court rules and/or processes for security of all warrants, and tracking of those warrants that are denied, or warrants that do not result in a court file being opened, need to be adopted³. Finally, processes for printing out copies for service as well as filing of inventories must be established.

The group agreed that this project will need funding for the Courts, law enforcement agencies and perhaps Regional Communication Centers to purchase and install the necessary technology. Additional funds for supporting equipment purchase, installation, training and maintenance, including printers, computers for those agencies that do not already have computers in police cruisers, internet access and paper will be needed. Funds for the installation of secure encrypted

³ The new Odyssey Case system is a person name-based system. A method for recording, searching and filing warrants that are not associated with a person’s name must be established. An example of this would be a warrant to search an automobile or a parcel of land not associated with a name or an arrest warrant for an individual with a last name unknown.

systems in the jurists' after-hours locations will need to be allocated. Funds for access to this system by appropriately authenticated prosecutors should be allocated.

Finally, the group recognized that the Court will need to establish a separate method for in-person paper applications and review for those cases where application information cannot, by law, be transmitted over the internet⁴.

⁴ An example of this would be a request for a search warrant with an affidavit containing child pornography.

Report of the eWarrant Working Group

A. Process

The eWarrant working group was established by order of the Chief Justice on July 24, 2018. Members appointed to the group were:

Justice Daniel Billings, Superior Court (Chair)

Judge Andre Janelle, District Court

Representative Karen Gerrish, Maine House of Representatives

Paul Rucha Esq., Assistant Attorney General

Tina Nadeau Esq., Executive Director, Maine Association of Criminal Defense Attorneys

Jonathan Liberman Esq., Assistant District Attorney for Region Two

Commander Scott Pelletier, Maine Drug Enforcement Agency Representative

John Pelletier Esq., Executive Director, Maine Commission Indigent Legal Services

Major Christopher Grotton, Maine State Police, Dept. of Public Safety Representative

Chief Marc Hagan, Lisbon Police Department, Maine Chiefs of Police Representative

Dennis Perry, Deputy Sheriff, Washington County, Maine Sheriffs Association Representative

Anne Jordan Esq., Manager of Criminal Process and Specialty Dockets, Maine Judicial Branch

Ashley Johnson, Court Operations Specialist, Maine Judicial Branch

Michelle Guerette, Senior Technology Business Analyst, Maine Judicial Branch

Amanda Pesonen, Law Clerk, Maine Judicial Branch

Prior to the commencement of the first meeting on August 21, 2018, each team member was provided with the following documents:

1. The order establishing the working group
2. A copy of LD 860, An Act to Establish a Statewide Electronic Warrant System
3. Copies of testimony and supporting background documents for LD 860, provided by Representative Gerrish

4. A summary of court data regarding the numbers of issued search warrants in 2017 (2,419), warrants on affidavits (1,598), criminal case filings (54,706), District and Superior Court Judges (56 and 17, respectively), and Justices of the Peace (52)
5. Copies of the current Maine Rules of Unified Criminal Procedure regarding:
 - applications for Arrest Warrants (M.R.U. Crim. P. 4)
 - applications for Search Warrants (M.R.U. Crim. P. 41)
 - applications for Search Warrants for Electronic, Tracking and Cellular Devices (M.R.U. Crim. P. 41B) and
 - applications for Securing an Electronic Search Warrant Outside the Presence of a Court or Justice of the Peace (M.R.U. Crim. P. 41C)¹
6. A copy of a state-by-state summary, compiled by the National Conference on State Legislatures, on Electronic Warrants (February 2017)
7. Articles researched and gathered by various group members concerning the efforts of other jurisdictions describing the development and use of electronic warrant systems in their communities.

Subsequent emails and meetings contained reviews of and discussions concerning the following additional materials:

8. Materials from a working group in Iowa that is also researching this process were provided by Commander Scott Pelletier. Their work flow chart as well as a proposed electronic security policy were distributed. Mr. Pelletier's colleague reported that Iowa had not yet found a vender that could provide the security standards they specified.
9. Commander Pelletier distributed a PowerPoint provided by the State of Kentucky on their eWarrant system. Kentucky has implemented this system statewide.
10. Michelle Guerette provided a detailed cost analysis for purchase and installation of the Tyler Technology eWarrant product.

¹ No rule currently exists permitting the application for securing, and issuance of, electronic arrest warrants.

11. Major Grotton provided a PowerPoint from Arizona concerning the use of eWarrants that address alcohol and drug impaired driving.

Four meetings were held over the course of the summer and fall of 2018 and early January 2019². At these meetings participants reviewed and discussed their goals and objectives, the unique challenges faced by their respective organizations in drafting, presenting, securing and executing search and arrest warrants, legal and constitutional concerns and issues and technological needs.

Discussions were also held concerning the need to ensure secure, encrypted transmissions, potential methods for such transmissions and technological challenges faced by some agencies due to lack of or limited internet and/or cell phone access, lack of computers or printers in their cruisers³ and lack of funding for training, routine maintenance and upkeep, certification and encryption licenses. Many group members were very supportive of the proposal but expressed concerns that a lack of appropriate and sufficient funding would result in agencies continuing to use a paper system.

Additional research materials provided by group members were distributed via email over the course of this project. Systems that were reviewed and discussed were the Cloud Gavel program, Citrix Sharefile, Tyler Technology's Odyssey program⁴ and various email-based programs described in the articles provided.

Law Clerk Amanda Pesonen was instrumental in conducting legal research on the initial questions of the constitutionality of electronic transmission, the taking of

² Two late fall meetings had to be rescheduled due to inclement weather and the unavailability of the Chair because of a trial.

³ An informal poll of the membership of the Maine Chiefs of Police Association indicated that less than 20% of police cruisers are equipped with printers. This has hampered participation in the statewide electronic transmission of accident reports and is expected to have the same impact on any electronic warrant system.

⁴ The Maine Judicial Branch is currently implementing the Tyler Technology case management system. At the public hearing on LD 860, testimony was presented that Tyler's estimate to install such a system was an additional \$529,000 plus an additional annual fee of \$155,000. This quote included a video component recording interactions between the applicant and the jurist. Other preliminary quotes for installation of an e-warrant system, without a video component, came in between \$65,000 and \$185,000 for the system plus yearly maintenance and licensing fees for each agency. Additional fees for each law enforcement agency and individual officer licensing and encryption identifications and permission ranged from \$25-\$200 per individual. None of these quotes include costs that will be incurred by local agencies for annual maintenance and repair contracts, which will vary by agency size and systems, or the costs of securing internet access for those agencies that currently do not have such access in their cruisers. The quotes do not contain costs for purchase, installation or maintenance of printer in the cruisers. No formal requests for proposals were issued, so the figures cited may vary greatly in a formal bid process.

oaths, the legality of service of electronic warrants on out-of-state entities and the considerations of ways to ensure that in any court proceeding challenging the validity or authenticity of an electronic warrant, defense counsel is provided the actual, unaltered affidavit, warrant and supporting documents that were relied upon by the court when the warrant was issued.

Law Clerk Amanda Pesonen reported that there do not appear to be any constitutional or statutory barriers to such a system. While rule changes to implement an electronic search warrant system may be best, a change does not appear necessary. A rule for the issuance of an electronic arrest warrant will need to be adopted⁵.

B. Recommendations

The eWarrant working group makes the following recommendations:

1. Maine should fund and implement a single secure, encrypted statewide online portal for the transmission, review, issuance and/or denial of arrest and search warrants. The system should be internet-based with a direct virtual private network (VPN) that encrypts the document(s) from the time sent to the time received.
2. The system should be available 24/7 and should provide real time review upon submission.
3. The ability of certified Maine law enforcement to access the connection must require certifiable credentials in order to ensure that only properly certified and credentialed officers access it⁶.
4. Likewise, judicial officers should receive and use appropriate unique credentials to ensure that only duly appointed jurists access the system.

⁵ See footnote 1.

⁶ The Court will need to determine whether or not it wishes to include probation officers in the list of credentialed individuals who can access the system and request an arrest warrant on a probation violation. If it believes these officers should be included, the design should limit their access to arrest warrant requests only. At this time, there are 172 law enforcement agencies across the state with over 3000 individual officers currently certified as either full-time or part-time officers by the Maine Criminal Justice Academy.

5. The documents that are submitted must be subject to a format to ensure that they are secure and that any changes made to them (for instance, the affixing of a jurist's signature) are recorded and documented. An audit trail for each application, whether it be an affidavit or a search warrant, or one for an arrest warrant, from submission to completion should be part of the system.
6. Once signed by a jurist, the system must be designed so as to ensure that no further changes, additions or deletions to the approved document can occur.
7. The system must be designed so that when the document arrives in the portal, it should trigger an alert to the presiding jurist that a request has arrived.
8. The working group does not recommend that the documents be routed to a queue controlled or administered by a clerk as such system is not available after hours or on weekends⁷.
9. The system must be designed so that once a request is either granted or denied, a record of the judicial decision is made and contained in a searchable database. It must also include an automatic notification to the requesting officer of the results of the request.
10. The system must include the ability to securely transfer the documents to any subsequently opened court file.
11. For arrest warrants, once issued, the system design must include business practices to enter the warrant, including any bail orders, into the METRO system for entry on the switch.
12. The inclusion of bail and/or bail conditions on the approved arrest warrant will require form changes as well as programming changes in the Court's and the Department of Public Safety's computer systems. Funding to accomplish this will be required.
13. The system must be designed so that the reviewing jurist has the ability to directly communicate to the submitting officer in the event of questions. One

⁷ The current Odyssey case management system design requires documents to enter a queue at the Clerk's office for review by a clerk before being accepted.

possible way to do this is to have a two-factor authentication: the first factor being the certified encrypted credential and the second factor being the cell phone number where the officer can receive a code and the number then made available to the jurist.

14. The system must be designed so that the application/affidavit can accept an electronic signature and be sworn to. The Working Group recommends that the document not be sworn to until the judicial officer has reviewed it and contacted the officer by cell phone to take the oath.

15. The system should have the ability for the jurist to return the affidavit, unsigned, to the officer for corrections, deletions etc. and then resubmission.

16. If a warrant is declined, the system should have a method for notifying the officer of the decision and for entry of the decision in any related court docket or record of action.

17. If the warrant is issued, the system's design should "lock down" the warrant as approved and store a copy in the court warrant repository until moved into the appropriate location according to business practices as created by the Court.

18. The system should automatically assign a number to any approved warrant. It could be something as simple as ESW-2019-001 (electronic search warrant) or EAW-2019-001 (electronic arrest warrant). That number should then be used by the officer on the return of the warrant and/or inventory so that it can be easily matched up with the application and appropriate court files.

19. The numbering system should also allow for any additional affidavit amendments and to link the initial documents to subsequent requests/amendments/orders. For example, a law enforcement officer may file an affidavit for a search warrant for stolen firearms. While executing the warrant, evidence of drug trafficking is found. The officer will stop the first search and submit a subsequent affidavit for a search warrant for drugs. The system should assign a simple number such as AA1 for the subsequent affidavit that is added to the end of the original search warrant number so that the affidavits and orders are kept together.

20. The system should have the ability to file, and match up, a motion for extension of time for the return of the warrant pursuant to 15 M.R.S. §56 for those instances when an electronic service provider has not returned the material in a timely manner.

21. The system should be designed so that an appropriately credentialed prosecutor can have access to the application/warrant and supporting documents at all stages of the process. This does not include the ability to communicate with the jurist prior to the decision on issuance. This will provide for appropriate tracking of documents for discovery purposes.

22. Court rules should continue to allow the filing of paper-based applications in those limited circumstances where state or federal law would prohibit the transmission of the request or supporting documents or in those limited circumstances where the officer feels the materials should not be transmitted electronically⁸.

23. For the initial launch, the Working Group does not recommend that Justices of the Peace be included in this process. Further research into security and encryption issues at each JP's office/location will need to be undertaken before the program is expanded to include Justices of the Peace⁹.

24. The Working Group does not make a recommendation as to the specific system type to be adopted. It is noted that some members favor the Odyssey product so as to be compatible with the court's new case management system while others note that the Citrix system has recently been approved by the Maine State Police Access Integrity Unit as an acceptable vehicle for criminal background information.

25. The system must be designed so that the directory of credentials of officers, prosecutors and jurists are regularly reviewed and updated to remove those individuals no longer employed in their respective positions. The Maine Judicial

⁸ An example of this would be an application that contains child pornography in support of the statement of probable cause.

⁹ Currently, our 52 Justices of the Peace (JP) are private attorneys with offices located statewide. Each JP has an individual computer system. These systems include confidential client and proprietary business files. It is presumed that the system types, levels of security, and access to the systems vary from JP to JP. Any addition of JPs to the system must address security, preservation of confidentiality and limitation of access by other employees.

Branch should assign this task to a specific individual to ensure that the data base is kept up to date. Law enforcement agencies and prosecutor's offices should be required to submit regular, periodic updates of personnel changes to the designated Judicial Branch employee.

26. The Maine Judicial Branch should design and implement an "on-call" schedule for judicial review of all applications to ensure that jurists are available 24/7 to timely review the applications. Adjustments to regular court assignments during the assigned on-call period will need to be made.

27. As the Maine Judicial Branch moves towards implementation of the Odyssey system, it will need to design business practices to address those applications where a case is never opened, a name is not associated with the warrant or where a complaint has yet to be filed. System practices to match up the warrants with subsequently filed cases will need to be implemented.

28. The system should have the ability to seal affidavits, warrants and denial of warrants and accompanying documents. It should also contain a component allowing law enforcement officers or prosecutors to request the affidavit and accompanying documents be sealed.

29. Business rules should be established for those situations where a criminal complaint, accompanied by an affidavit for an arrest warrant, is filed, to immediately route these documents to a specific jurist. This recommendation is made to address those complex cases where the jurist has previously reviewed other related affidavits for arrest and or search warrant requests.

30. The Working Group suggests that the Court consider, during an initial transition period, utilizing Active Retired Judges to handle the requests. This will allow the Court to develop data and to track the average daily requests to assist in long term planning for judicial assignments for eWarrant request review.

31. The Working group recommends that the Court, in any rule adoption regarding eWarrant, affirmatively state in the rule that the affidavits and accompanying documents are not subject to FOIA requests unless otherwise ordered by the Court.

The Working Group notes that the major advantage to such a system would be that requests for warrants will no longer be delayed because of or tied to geography. Many instances of officers having to travel long distances to courthouses or a jurist's home to present a paper warrant were discussed. An electronic system allows for real time review from anywhere in the state. This will lead to faster, more efficient and timely review of requests for warrants.

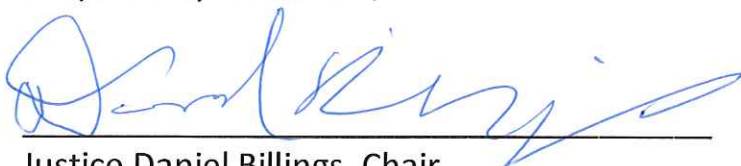
The Working Group believes that an eWarrant system can be implemented at a significantly lower cost than that quoted by the Odyssey proposal. The primary price reduction would be achieved through the elimination of the video component contained in the proposal. That being said, the Working Group also notes that there will be start-up and ongoing costs that will not be insignificant for all agencies involved. If an electronic warrant system is adopted, sufficient funding to properly install, train, maintain and use the system should be provided.

C. CONCLUSION

The Working Group believes that a statewide eWarrant system should be fully implemented in Maine. Our review of other systems, including the statewide system in Kentucky, and local systems in Arizona, California, Georgia, Indiana, Maryland, and Michigan led the Working Group to conclude that a properly designed, funded and implemented electronic warrant system would be cost-efficient, reliable, reduce delays and provide for timelier gathering of evidence and arrest of wanted individuals. Implementation of this new system will require the continuing cooperation of all parties involved.

The eWarrant Working Group's authority continues until July 1, 2019. The members remain available to continue further work on this project as directed by the Chief Justice.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Daniel Billings", is written over a horizontal line.

Justice Daniel Billings, Chair

APPENDIX A

JUDICIAL BRANCH eWARRANT WORKING GROUP

Type: Working Group, Limited Period
Established: July 10, 2018
Chair: Justice Daniel Billings
Report Date: December 15, 2018
Reports to: Maine Supreme Judicial Court
Completion Date: July 1, 2019

I. Purpose:

The purpose of the eWarrant Working Group is to recommend one or more methods for designing and effectuating an efficient, fair, and thorough digital, electronic system for the requests for, and judicial action on, arrest and search warrants. The expectation is that the system would be available 24/7.

Any digital eWarrant system must be implemented in a way that assures the careful consideration of warrant applications and accompanying material, consistent with provisions of the Maine and United States Constitutions; provides assurances of accuracy in the electronic transmission of documents; confirms the authority and identity of the applicant; assures identity and judicial authority for the issuance of the warrant; and provides safeguards to prevent any fraudulent use of the system.

If the Working Group concludes that a system cannot be created without additions to currently available resources, the Group will explore the options and anticipated costs to provide the resources for all aspects of government to develop an adequate electronic warrant system.

II. Authority:

The Working Group is created pursuant to the authority of the Chief Justice. *See* 4 M.R.S § 1. The Working Group is authorized to obtain input from all stakeholders so that any recommendations take into account the constitutional rights at stake as well as public safety and institutional requirements for a well-working system.

APPENDIX A

III. Membership:

The Working Group membership will include representatives from the Executive, Legislative, and Judicial Branches of Maine State Government, as well as interested stakeholder organizations, individual attorneys, and others with valuable knowledge and experience to contribute. The specific names will be listed in a separate membership roster, and membership may be changed or expanded as ordered by the Chief Justice.

IV. Meetings:

The Working Group will meet as often as is necessary to fulfill its responsibilities. The Working Group may meet by phone or video. The Chair will schedule the meetings of the Working Group.

V. Consultation and Reporting:

The eWarrant Working Group will consult as necessary with the Trial Court Chiefs and other interested individuals. It will provide its analysis and recommendations in a Report delivered to the Chief Justice of the Maine Supreme Judicial Court **no later than December 15, 2018**, unless that date is extended by the Chief Justice.

VI. Duration:

Unless the Chief Justice extends this charter, the eWarrant Working Group will cease to exist on July 1, 2019.

Dated: July 24, 2018

Approved by:

_____/s/_____
Chief Justice Leigh I. Saufley
Maine Supreme Judicial Court

APPENDIX B

eWarrant Working Group JUDICIAL BRANCH MEMBERSHIP ROSTER July 10, 2018

Justice Dan Billings, Superior Court (**Chair**)

Judge Andre Janelle, District Court

Representative Karen Gerrish

Paul Rucha, Assistant Attorney General

Tina Nadeau, MACDL President

Jonathan Liberman, District Attorney

Scott Pelletier, MDEA Representative

John Pelletier, Esq., MCILS Executive Director

Major Chris Grotton, Dept of Public Safety Representative

Chief Marc Hagan, Lisbon, Chiefs of Police Representative

Dennis Perry, Comm. Dir. Washington County, State Sheriffs' Representative

Anne Jordan, Esq., JB Manager of Criminal Process & Specialty Dockets

Ashley Johnson, JB Court Operations Specialist

Michelle Guerrette, JB Senior Technology Business Analyst

Amanda Pesonen, JB Law Clerk

Justice Jeffrey Hjelm, SJC Liaison